IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2921 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHA RUBBERS PVT. LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2921 of 1993

MS SAMEERA SHAH FOR MR SN SOPARKAR for Petitioner No. 1

MR MR MENGDEY, AGP for Respondent No. 1

MR BJ JADEJA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 16/12/2004

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an

appropriate writ, direction and order directing the respondents to disburse to the petitioner the Capital Investment Subsidy of Rs.17.77 lakhs pursuant to the letter dated 28.8.1991 with interest at the rate of 21% p.a. from 15.11.1991 till the actual date of payment by the respondents to the petitioner. In view of the fact that subsequently by order dated 21.7.197, the amount of Rs.1662528/- is already disbursed to the petitioner on 21.7.1997. The prayer to disburse the petitioner the Capital Investment Subsidy is not required to be considered as the same is already paid now. Therefore, only the question which is required to be considered is with regard to the interest to be paid to the petitioner on the said amount which is paid belatedly.

2. By letter/order dated 28.8.1991, the respondent no.2 - GSFC sanctioned the Capital Investment subsidy for an amount of Rs.17.77 lakhs. It is the case of the petitioner that after the aforesaid sanction, the petitioner made a lot of representations through various letters requesting the respondent no.2 to make the payment towards subsidy sanctioned by it. However, for the first time, the GSFC addressed a letter dated 21.12.1994 to the petitioner asking for production of certain details for disbursement of the subsidy amount. It is required to be noted that this Court (Coram: Y.B.Bhatt, J as he then was) while admitting the present petition passed the following order on 6.7.1994:-

> "Rule. Heard the learned counsel for the parties on the question of interim relief. Mr.Jadeja, learned counsel for the 2nd respondent states that the funds in respect of the sanctioned subsidy have not been released for disbursement to the second respondent by the first respondent, and that therefore they are unable to release the amount in favour of the petitioner. Mr.Y.F.Mehta, learned A.G.P. for the first respondent states that he has no instructions in the matter. On the facts and circumstances of the case, it is directed that both respondents shall apply their minds consciously and actively with a view to release the funds by 30th of September, 1994. In case there is an impediment whatsoever in releasing the funds in question, the concerned respondent is directed to file an affidavit setting out all the relevant facts. S.O. to 30th September, 1994."

3. After the order came to be passed by this Court, both the authorities i.e. GSFC as well as the DIC

started taking interest in considering the question of payment of subsidy to the petitioner and accordingly, the GSFC addressed a letter to the petitioner on 21.12.1994 for the first time asking for the production of certain details for the disbursement of the subsidy amount and till then no action was taken either by GSFC and/or by the DIC. It is the case of the petitioner that immediately on receipt of the aforesaid communication dated 29.12.1994, the petitioner supplied necessary documents which were asked for by communication dated 21.12.1994. It appears from the record that after the receipt of the aforesaid documents, the GSFC finally sanctioned and directed the District Industries Centre (DIC) to make the payment of subsidy of Rs.17,27,000/- to the petitioner vide its letter dated 18.9.1995 and thereafter, the DIC has made a final order of payment of Rs.1662598/- vide its letter dated 21.7.1997 and the DIC finally disbursed the subsidy of Rs.1668598/- on 21.1.1997. Under the circumstances, the question with regard to the payment of interest on the aforesaid amount from the date of sanctioning the subsidy i.e.28.8.1991 till the actual disbursement on 21.7.1997 is required to be considered by this Court.

4. An affidavit in reply is filed on behalf of the GSFC in which the stand is taken by GSFC is that the subsidy is sanctioned by the Corporation as the agent of the Government and the actual disbursement is required to be made by the State Government. It is also further submitted in the affidavit in reply that according to the guidelines given to the respondent no.2, disbursement of the subsidy was to be made proportionately against the disbursement of loan availed by the party for the period upto 31.3.1991 and since the disbursement of the loan was made in April, 1991, it did not fall within the eligibility criteria and therefore, the subsidy was not disbursed. It is further stated in the affidavit in reply that this criteria was changed thereafter and it was decided to release subsidy to the units where the subsidy sanctioned is upto Rs.15 lacs. So far as the affidavit in reply filed on behalf of the State Government is concerned, there is no justification shown by the DIC in taking time for disbursement of the amount immediately after 18.9.1995 and no justification is shown why the amount of subsidy was disbursed only on 21.7.1997 i.e. after a period of almost 1 years and 9 months of the letter sent by GSFC to DIC for disbursement of the subsidy.

5. It is an admitted position that the subsidy was sanctioned by the GSFC on 28.8.1991. Inspite of lot of

representations through various letters by the petitioner to the GSFC, requesting it to make the payment towards the subsidy sanctioned by it nothing was done by the GIDC till 21.12.1994. Only because of the order passed by this Court on 6.7.1994, the GSFC has initiated the proceedings taking action and for the first time, by letter dated 21.12.1994, the petitioner was asked to produce certain details for disbursement of the subsidy amount which the petitioner immediately furnished. Ultimately, the respondent no.2 GSFC finally sanctioned and directed the DIC to make the payment of subsidy of Rs.17,27,000/- to the petitioner vide his letter dated 18.9.1995. It is required to be noted that the DIC is the disbursing agency. The DIC thereafter, after a period of one year and nine months disbursed the subsidy amount of Rs.1662598/- on 21.7.1997. The explanation which is given by the respondent no.2 in its affidavit in reply is not required to be accepted as nothing has been mentioned with regard to when the criteria was changed. Even there is no correspondence between the date of sanction i.e. 28.8.1991 and 21.12.1994 to the effect tha the petitioner is not entitled the subsidy as per the scheme. The explanation which is given by GSFC in its right is not a bonafide explanation and it is only with a view to give some reasons, the same is mentioned. Only after this Court passed an order on 6.7.1994, the petitioner was served with one letter dated 21.12.1994. There is total negligence or carelessness on the part of the GSFC till 21.12.1994. Under the circumstances, the GSFC is required to pay interest atleast upto 18.9.1995 and so far as the DIC is concerned, they are required to pay the interest for the period between 18.9.1995 till 21.7.1997. Considering and giving some reasonable time to the GSFC to consider/process the application for disbursement of the subsidy, the GSFC is directed to pay interest on the aforesaid amount of Rs.1662598/- from 28.8.1992 till 18.9.1995 and giving some reasonable time to the DIC to process the application and to disburse the subsidy. The DIC is directed to pay interest at the rate of 10% on the aforesaid amount of Rs.1662598/- for the period between 18.12.1995 till 21.7.1997. For the reasons stated above, the petition partly succeeds. The respondent no.1 is directed to pay interest at the rate of 10% p.a. on the aforesaid amount of Rs.1662598/- for the period between 18.12.1995 till 21.7.1997 at the rate of 10% p.a. and the respondent no.2 GSFC is directed to pay the interest at the rate of 10% on the aforesaid amount of rs.1662598/- for the period between 28.8.1992 ill 18.9.1995. The aforesaid amount is required to be paid by the concerned respondents within a period of two months from the date of the receipt of this order failing

which the concerned respondents are directed to pay interest at the rate of 12% p.a. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah, J)
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